

HEALTH AND SENIOR SERVICES

OFFICE OF THE COMMISSIONER

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 8:1

Authorized By: Clifton R. Lacy, M.D., Commissioner,

Department of Health and Senior Services.

Authority: N.J.S.A.26:1A-15 and C.F.R. 35.107

42 U.S.C.12101 et seq. and 28

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2003-112

Submit written comments by June 6, 2003 to:

Monique Y. Smith

Department of Health and Senior Services

Health and Agriculture Building

8th Floor

PO Box 360

Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed new rules establish a procedure for the Department of Health and Senior Services to follow when someone wishes to complain that the agency has done something that violates the Americans with Disabilities Act, also known as the ADA (42 U.S.C.A.12101 et seq.) The ADA prohibits a public entity, including the State agency proposing to adopt these rules, from discriminating against a qualified individual with a disability, or from excluding that person from participation in, or denying the person the benefits of, the services, programs or activities of the agency. Regulations of the United States Justice Department (found at 28 C.F.R. Part 35) require that such governmental agencies maintain and publish a procedure to be followed when someone wishes to complain of a violation of the law. Under this procedure anyone, including an employee or applicant for employment, who believes he or she has been discriminated against in any program, service or activity of the State agency, may require the agency to review and, if appropriate, to investigate the

grievance. These rules set a 30-day limit following the incident in which the individual may file the grievance; they also set a 45-day objective period for the completion of the inquiry by the agency (and the designee). The rules also identify by title, with address and telephone number, the ADA coordinator of the agency who will be the person to receive the grievances in the first instance. These rules will also contain a form for filing a grievance and a Notice of ADA Procedure, a copy of which will be available to interested persons.

Substantially similar rules at N.J.A.C.8:1 expired on June 19, 2000, pursuant to Executive Orders No. 66(1978).

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement of N.J.A.C.1:30-3.3 (a) 5.

Social Impact

Because the injustice of discrimination continues to be visited upon the members of our society solely on account of their disabilities, Congress passed the ADA, which attacks that injustice on many fronts and with many methods. One of these fronts is public entities and one of the methods is the requirement that such public entities undertake an examination of allegations that they have violated the substantive provisions of the

ADA. Persons with disabilities are sometimes excluded from the programs, services or activities of government agencies out of ignorance on the part of able-bodied individuals, and sometimes out of the lack of an available established mechanism whereby those barriers to participation or enjoyment of benefits can be removed. This proposed grievance procedure will provide persons with disabilities one means to correct such lingering discrimination and to eliminate persisting barriers. The procedure will also assist the Department of Health and Senior Services to eliminate such discrimination by bringing to the agency's attention instances in which such discrimination continues to exist, and provide the agency the necessary insight and opportunity to correct it. Society at large, the government in particular, and individuals with disabilities will benefit from the enactment of these rules. As barriers to access are removed and the programs, services and activities of the New Jersey State government are made available in a nondiscriminatory manner, persons with disabilities will be enabled fuller and more equal participation in all aspects of life. It is in the nature of the proposed procedure that the process be informal and expeditious but still effective; thus, the redemption of discriminatory conditions will be facilitated quickly and without the cumbersome and sometimes counterproductive formalities of other methods of complaint resolution.

Economic Impact

Although the proposed grievance procedure will result in some minor additional expense to the agency, the result of the inquiries and investigations precipitated by the use of the procedure may have significant economic impacts, both as additional expenses are incurred by the agency in remediating instances of discrimination or eliminating barriers, and as the resulting nondiscriminatory access to the agency's programs, services and activities results in additional gains for the disabled that have economic value to them.

Federal Standards

The proposed new rules are required to be adopted by the ADA (42 USCA.12101 et seq). The programs and procedures set forth in the rules do not exceed the standards of the ADA; therefore, no Federal standards analysis is required.

Job Impact

The proposed new rules will not result in the generation or loss of any jobs within the Department of Health and Senior Services or the State of New Jersey as a whole.

Agriculture Impact

These proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements are imposed on the Department of Health and Senior Services. Persons complaining that an agency has failed to comply with the ADA must provide certain information in their grievance. A regulatory flexibility analysis is not, therefore, required.

Smart Growth Impact

The proposed new rules will have no impact on the achievement of smart growth as implementation of the State Development and Redevelopment plan.

Full text of the proposed new rules follows:

CHAPTER I

DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

SUBCHAPTER 1. DEFINITIONS

8:1-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A.12101 et seq.

"Agency" means the Department of Health and Senior Services.

"Designated decision maker" means the Commissioner of Health and Senior Services or a designee of the Commissioner of Health and Senior Services.

SUBCHAPTER 2. GENERAL PROVISIONS

8:1-2.1 Purpose

- (a) These rules are promulgated by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.
- (b) The purpose of these rules is to establish a designated coordinator whose

duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint files with the agency pursuant to N.J.A.C. 8:1-4.4.

8:1-2.2 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodations which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal request for accommodation procedure providing for prompt and equitable resolution of alleging any action prohibited by the U.S.

Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individuals shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 8:1. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator

Department of Health and Senior Services

Health and Agriculture Building

8th Floor

PO Box 360

Trenton, New Jersey 08625-0360

1. A grievance may be filed in writing, orally, or on audio tape, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. If the grievance is filed orally, the ADA coordinator or designate shall complete the form, read back to the grievant the form as written, and note and sign a statement to the effect that the grievant is in agreement with the statement of the grievance. In cases of employment related complaints, the

procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination, which occurred before this grievance procedure was in place, will be considered on a case-by-case basis).
3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.
4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision-maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA Coordinator will maintain the files and records of the agency relating to the grievance filed.
6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.
7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to ensure that the agency complies with the ADA and implementing Federal rules.

SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

8:1-3.1 Designated ADA coordinator

- (a) The designated coordinator of ADA compliance and grievance investigation for the agency is:

ADA Coordinator

New Jersey Department of Health and Senior Services

Health and Agriculture Building

8th Floor Room 805

Trenton, New Jersey 08625-0360

- (b). All inquiries regarding the agency's compliance with the and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.
- (c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 8:1-4.

SUBCHAPTER 4. ADA GRIEVANCE PROCEDURE

8:1-4.1 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or

orally to the designated ADA coordinator identified in N.J.A.C. 8:1-3.1 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A.7-1.1 through 3.4, if those rules are applicable.

8:1-4.2 Grievance contents

- (a) A grievance submitted pursuant to the subchapter may be submitted in or on the form set forth at N.J.A.C. 8:1-4.3.
- (b) A grievance submitted pursuant to this subchapter shall include the following information:
 - 1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;
 - 2. The address and telephone number of the grievant or alternate contact person;

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations, of events and names of witnesses, if appropriate.

8:1-4.3 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter.

Americans with Disabilities Act Grievance Form

Date: _____

Name of Grievant: _____

Address of Grievant: _____

Telephone Number of Grievant: _____

Alternate Contact Person: _____

Address of Alternate Contact Person: _____

Telephone Number of Alternate Contact Person: _____

Division Alleged to have Denied Access: _____

Office/Unit: _____

Location: _____

INCIDENT OR BARRIER: Please describe the particular way in which you believe you have been denied the benefits of any service, program, or activity or have otherwise been subject to discrimination. Specify dates, times, and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incidents. Attach additional pages if necessary:

PROPOSED ACCESS OR ACCOMMODATION: If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access:

A copy of the above form may be obtained by contacting the designated ADA Coordinator identified at N.J.A.C. 8:1-3.1

8:1-4.4 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which

date shall not be later than 45 days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA, coordinator shall prepare a report for review by the designated decision-maker for the agency. The designated decision-maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.